

CIVIL LIBERTIES *Spring 2024*

Political Science 2386-01

Professor Ken I. Kersch

Civil Liberties

In this class, we will study the nature and scope of the protection afforded by American constitution(s) to individual rights and liberties. In its fundamentals, the topic is rather simple, and even repetitive. The United States is a democracy. This means that America's democratically-elected governments -- state and national -- are responsible for passing and enforcing laws aimed at advancing the common good. But, at the same time, as a *constitutional* democracy, American government officials are also prohibited from passing (or enforcing) laws that either exceed the powers granted (or reserved) to them under the relevant constitutions, or infringe upon constitutionally protected rights. Questions concerning civil liberties repeatedly pit the claim of the people's elected representatives (and other government officials) to legislate in the public interest against the claims of individuals that, in doing so in a particular instance, they are exceeding their constitutional powers, or violating constitutionally protected individual rights. These dual -- and perhaps even opposed -- commitments are often in tension.

Clashes over the limits on government(s) in the name of individual rights have characterized the U.S.'s political culture from its inception, and often been implicated in the some of the most politically salient issues of their times. The nature, scope, and institutional protections afforded to civil liberties have been fought-over, debated, settled, and unsettled over the course of American political history and development. In this class, we will explore the principles, problems, history, and future of individual rights protection in the United States, with a selective emphasis on a few key substantive rights. While we will at times touch upon issues of equality -- *civil rights*, as opposed to civil liberties -- given time constraints, those must be left to another course. We will take a broad view of the subject, emphasizing not only legal but also cultural and political contestation over rights. As such, while we will read many Supreme Court cases, unlike a traditional (doctrinal) law school course, we will also study a wide variety of other relevant events, struggles, arguments, and texts.

Office Hours: I will have drop-in office hours (no appointment necessary) X PM in my office in McGuinn 515. Other meeting times -- both in person and on Zoom -- are available by appointment. For those, you should email me -- best -- or otherwise speak to me to set up a time to talk.

Class Meetings/Attendance: This class will meet Tuesdays and Thursdays, X PM. Except in cases of illness or other important life issue, students are expected to attend all classes (for disability issues affecting attendance, please make arrangements through the

disability office (information below) or the Dean's office). The class will be part lecture and part discussion. Students are expected to attend all classes, to do all assigned readings prior to class, and to be ready to discuss the readings and the questions they raise during our class meetings. I reserve the right to call on any student in class at any time.

There will be **no audio or video recordings** of our class meetings. If students must miss a classes or classes for an excused absence, they are expected to get the notes from a fellow student. I am happy to meet with students during office hours to discuss the content of the class they may have missed.

Restrictions on Computers in Class: To minimize distractions, students are prohibited from using any type of computer or phone into class that is active/turned on (this means laptops, notebooks, smartphones, etc.) *for any purpose other than bringing up assigned readings on the screen.* Student may not browse the internet, engage in social media, chat, or use their computer for any other purpose than accessing course texts. These restrictions, and this rule, are mandatory. Exceptions will be made in individual cases for legitimate, dean-approved reasons, including disability issues cleared through the Dean's or the disability office (information below).

Canvas: We will make use of the course Canvas page. Any assigned reading that is not in a required-for-purchase book is posted in the Modules section of the course Canvas page.

While we will use Canvas for some exercises and for the submission of papers, you should *disregard any number grades that Canvas assigns* to the letter grades I give in this class. *Grades are given, and kept separately, off Canvas on a private Excel sheet.*

Teaching Assistant: Y will be the Teaching Assistant for the course. Y will be present at all of our class meetings, and will hold regular office hours (using my office) each week in addition to my office hours. Y will also be grading all of the assigned quizzes and papers in this class.

Academic Integrity: Academic integrity is violated by any dishonest act committed in an academic context, including but not limited to cheating, plagiarism (attempting to pass off the work of others or computer-generated artificial intelligence as your own, in any way in any part of an assignment), and submitting for credit in this class work done for another class. All suspected violations will be reported to the Dean in accordance with University policy. A final grade of "F" for the course will be given in the event of a violation of academic integrity. Additional penalties may apply.

The University's policy on Academic Integrity is available here:

https://www.bc.edu/bc-web/academics/sites/university-catalog/policies-procedures.html#tab-academic_integrity_policies

Disability Accommodations: If you are a student with a documented disability seeking reasonable accommodations in this course, please contact Z at the Connors Family Learning Center regarding learning disabilities and ADHD. For other students with medical, physical, psychological, and temporary disabilities should register with the Disability Services Office. Go to the following link for more details to register: <https://www.bc.edu/content/bc-web/offices/student-affairs/sites/student-outreach-and-support-services/disability-services.html>

ESL Assistance: Boston College welcomes students from around the world and recognizes the unique perspectives international students bring enrich the campus community. To empower students whose first language is not English, Boston College makes ESL specific resources available on campus, including ESL writing support and conversation appointments through the [Connors Family Learning Center](#). To schedule an appointment call x. A [curated list of web resources](#) is also available through the CFLC website.

Course Requirements: Two Quizzes (30%); Two (2) Papers (40%); Two Podcast Reaction Reports (10%); Class Attendance/Participation/Ungraded Exercises (20%).

All grades will be calculated by me, on a private Excel sheet -- and not using (idiosyncratic) numbers auto-generated by Canvas, or any other calculating system.

Texts:

Howard Gillman, Mark Graber, and Keith Whittington, *American Constitutionalism, Volume II: Rights and Liberties* (Oxford, 2021)(Third edition)[You are **required** to purchase/borrow, read, and bring this text to each class meeting].

Additional Materials posted on the course Canvas Site [CV].

Readings:

The assignment of weeks to the readings is approximate. Please keep up with where we are in reality in the actual class.

Students are required to do the readings ***from the assigned text*** -- NOT from what you think are the same thing from Wikipedia and other web sources. While many of those web sources are accurate on the basic (case) facts, and useful for many purposes, they will not place that information in the proper context (both of the course, and historically and politically) in a way that is reliable for this class. The assigned texts are recent work by top scholars reflecting the best, current scholarly understandings of U.S. constitutional development. My purpose in teaching ***this course, with these texts*** – as opposed of giving you a list of cases, terms, and events to Google – is to initiate you into these more sophisticated understandings of the subject as taught by the assigned texts.

BASIC CONCEPTS

WEEK ONE:

What are Civil Liberties? Why do they Matter? How are they Protected?

Contemporary Controversies:

Anemona Hartocollis and Stephanie Saul, “After Antisemitic Attacks, Colleges Debate What Kind of Speech is Out of Bounds,” *New York Times* (November 2023)[CV]

Erika Solomon, “Germany’s Stifling of Pro-Palestinian Voices Pits Historical Guilt Against Free Speech,” *New York Times* (November 2023)[CV]

WEEKS TWO/THREE:

HOW HAVE INDIVIDUAL RIGHTS BEEN PROTECTED IN THE UNITED STATES? POLITICAL AND CONSTITUTIONAL DEVELOPMENT

Beginnings:

**The English Inheritance, and the Colonial Experience:
Political Clashes and Settlements; Liberal and Republican Political
Thought Rights Enumerations/Constitutional Entrenchment;
Common Law; Natural Law/Rights**

GGW 29-38, 61-69

English Bill of Rights (1689)

Entick v. Carrington (1765); *Wilkes v. Wood* [CV]; Otis, Argument in Writs of Assistance Case [CV]; *The Trial of William Penn and Bushell’s Case* (1670)

**Constitutional Structures: Americans Design a System of Rights
Protection**

GGW 71-79, 93-94

Declaration of Independence (1776); Federalist # 1 [Hamilton]; Federalist # 10 [Madison]; Federalist #51 [Madison][CV]

Rights Enumerations

GGW 79-93

Virginia Declaration of Rights (1776); A Declaration of the Rights of the Inhabitants of Pennsylvania (1776); Drafting Debate Over the National Bill of Rights (1787); Ratification Debates Over the National Bill of Rights (1787); Congressional Debates over the Bill of Rights (1789); Americans React to the Bill of Rights [CV]

Federalist #84 [Hamilton]

Correspondence Between Thomas Jefferson and James Madison on a Bill of Rights.

Judicial Review as a Method of Rights Protection: Natural Law/Rights; Structural Design; Constitutional Text

GGW 123-125; 128-131

Colonial Era Discussions of Judicial Review [CV]

Calder v. Bull (1798); *Marbury v. Madison* (1803)

Federalist #78 [Hamilton][CV]

WEEK FOUR:

Constitutional Development Involving Individual Liberty: The Modern Era and Before – Constitutional Rights Protection Regimes?

The Rights Protections Before the Civil War (1789-1860)

GGW 119-124, 169-176

Barron v. Baltimore (1833)

[Substance – mostly under state constitutions and state constitutional law, and national (unadjudicated) politics -- covered in substantive sections of the syllabus below on Property, Contract, Speech, Religion, etc.]

The Civil War and the Civil War/Reconstruction Amendments (13th/14th/15th)(1865-1870): A New Regime of Powerful Courts (and others) Protecting Rights?

GGW 223-241

Thirteenth/Fourteenth/Fifteenth Amendments; Debates Over the Thirteenth Amendment (1864-1865); Debates Over the Fourteenth Amendment (1866); *Slaughterhouse Cases* (1873)

Abraham Lincoln, *Gettysburg Address* (1863)[CV]

PODCASTS:

1) “The Slaughterhouse Cases at 150” (NCC 2023):

<https://constitutioncenter.org/news-debate/podcasts//the-slaughterhouse-cases-at-150>

Twentieth Century Progressivism and Liberalism: The Living Constitution and Civil Libertarianism

Woodrow Wilson, “What is Progress?” [CV]; Woodrow Wilson, “The Meaning of Democracy” [CV]

Justice David Brewer, “Judicial Power: The Nation’s Safeguard” [CV]; Justice Stephen Field, “The Centenary of the Supreme Court of the United States” [CV]

Samuel Walker, *In Defense of American Liberties: A History of the ACLU* [CV]

The Liberal New Deal/Civil Libertarian Order: Nationalizing Constitutional Rights – Incorporation of the Bill of Rights, Bifurcated Review/Tiers of Scrutiny/Preferred Freedoms

GGW 279-285, 367-369, 371-386, 309-315, 382-386, 489-494, 773-777

Amendments 1-10, U.S. Constitution; *Barron v. Baltimore* (1833); Fourteenth Amendment (1868)

[*Slaughterhouse Cases* (1873)]; *Lochner v. New York* (1905)

Franklin Delano Roosevelt, Four Freedoms Speech [CV]
U.S. v. Carolene Products (1938)

Hurtado v. California (1884); *Powell v. Alabama* (1932)[“The Scottsboro Cases”]; *Palko v. Connecticut* (1937)[CV]; *Adamson v. California* (1947)[CV]; *Rochin v. California* (1952) [CV]; *Duncan v. Louisiana* (1968); *McDonald v. City of Chicago* (2010).

SPECIFIC INDIVIDUAL LIBERTIES

WEEKS FIVE/SIX:

PROPERTY RIGHTS AND CONTRACT RIGHTS

Contemporary Controversy:

Are economic liberties “civil liberties”?

John Locke, *Second Treatise of Civil Government* (Property)[CV]

Christopher Tiedemann and Benjamin Cardozo on Property Rights and the Public Good [CV]

State Impairment of the Obligation of Contract (Article I, Section 10)

Contemporary Controversy:

CDC Eviction Moratorium (August 3, 2021)[CV]

Nova, “Renters are Still Protected from Eviction in These States and Cities,” CNBC (November 12, 2021)[CV]

GGW 132-136, 176-178, 242, 394-398

Dartmouth College v. Woodward (1819) [CV]; *Charles River Bridge v. Warren Bridge* (1837); *Home Building and Loan Association v. Blaisdell* (1934)

Liberty of Contract (Substantive Due Process Liberty) and Government Regulation (5th/14th Amendment Due Process Clauses and State Constitutions)

GGW 178-184, 252-255, 307-318

Wynehamer v. People (1856); Thomas Cooley, *A Treatise of the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* (1868); *Lochner v. New York* (1905); *Muller v. Oregon* (1908)

GGW 396-400

West Coast Hotel v. Parrish (1937); *Williamson v. Lee Optical* (1955)

“Takings” of Private Property (Fifth Amendment and State Constitutions)

GGW 242-246, 302-307

[*Barron v. Baltimore* (1833)]

Beekman v. Saratoga and Schenectady Railroad Co (1831); Debate Over the Second Confiscation Act (1861-1862); Abraham Lincoln, To the Senate and House of Representatives; *Mugler v. Kansas* (1887); *Pennsylvania Coal v. Mahon* (1927)

GGW 579-583, 680-685, 782-788

Lucas v. South Carolina Coastal Council (1992); *Kelo v. New London* (2005);
Horne v. Department of Agriculture (2015)

WEEK SEVEN:

ARMS (SECOND AMENDMENT AND STATE CONSTITUTIONS)

Contemporary Controversy:

Adam Liptak and Glenn Thrush, “Supreme Court to Hear Major Guns Case Involving Domestic Violence,” *New York Times* (June 2023)[CV]

PODCASTS:

- 1) “What the Supreme Court’s Opinion in *NYSRPA v. Bruen* Means for the Second Amendment” (NCC 2022):

<https://constitutioncenter.org/news-debate/podcasts/what-the-supreme-courts-opinion-in-nysrpa-v-bruen-means-for-the-second-amendment>

- 2) “Is there a Constitutional Right to Concealed Carry?” [Re *Bruen*](NCC 2021):

<https://constitutioncenter.org/news-debate/podcasts/is-nys-concealed-carry-law-constitutional>

- 3) “Armed in America” (NCC 2019):

<https://constitutioncenter.org/interactive-constitution/podcast/armed-in-america>

- 4) “Is the Second Amendment a ‘Second-Class Right?’” (NCC 2019):

<https://constitutioncenter.org/interactive-constitution/podcast/is-the-second-amendment-a-second-class-right>

- 5) “A Reasoned Debate About the Second Amendment” (NCC 2015):

<https://constitutioncenter.org/interactive-constitution/podcast/a-reasoned-debate-about-the-second-amendment>

- 6) “The Constitutionality of the Firearms Ban for Domestic Abusers” (NCC 2023)

<https://constitutioncenter.org/news-debate/podcasts/the-constitutionality-of-firearms-bans-for-domestic-violence-abusers>

- 7) “Domestic Violence Laws and Gun Rights” (NCC 2023):

<https://constitutioncenter.org/news-debate/podcasts//domestic-violence-laws-and-gun-rights>

GGW 49, 103, 140-141, 184-188, 321, 505-506, 596-598, 693-698, 773-777, 805-806

Bliss v. Commonwealth (Ky. 1822); *State v. Buzzard* (Ark. 1842)

National Party Platforms on Gun Rights and Gun Control [CV]

Debate Over the Federal Assault Weapons Ban (1994); John Ashcroft, Letter to the NRA (2001); *District of Columbia v. Heller* (2008); *McDonald v. City of Chicago* (2010)

NY State Rifle and Pistol v. Bruen [CV]

Jonah Bromwich, “New York Gun Laws Sow Confusion as the Nation Rethinks Regulation,” *New York Times* (February 27, 2023)[CV]

David Cole, “What Liberals Can Learn from the N.R.A.” [CV]

WEEKS EIGHT/NINE:

SPEECH (FIRST AMENDMENT AND STATE CONSTITUTIONS)

Contemporary Controversy:

Patricia Mazzei, Elizabeth Harris, Alexandra Alter, “Florida at Center of Debate as School Book Bans Surge Nationally,” *New York Times* (April 2023)[CV]

Martha Harris, “These are the 22 Books Removed From Utah’s Alpine School District,” KUER (April 2023)[CV]

Elizabeth Harris and Erika Ackerberg, “Are These Topics Too Adult for the Youngest Readers? Take a Look” *New York Times* (January 2024)[CV]

PODCASTS:

- 1) “The Constitutionality of Florida’s Education Bill” (NCC 2022):

<https://constitutioncenter.org/news-debate/podcasts/the-constitutionality-of-floridas-education-bill>

- 2) “Campus Free Speech and Academic Freedom” (NCC 2019):

<https://constitutioncenter.org/interactive-constitution/podcast/campus-free-speech-and-academic-freedom>

- 3) “Should the Government Regulate Speech on Campus?” (NCC 2019):

<https://constitutioncenter.org/interactive-constitution/podcast/should-the-government-regulate-speech-on-campus>

Should Government Regulate Social Media?:

- 4) “Is the First Amendment Enough Today?” (NCC 2022)

<https://constitutioncenter.org/news-debate/podcasts/is-the-first-amendment-enough-today>

- 5) Jack Balkin, “How Should the Law Approach Social Media Abuses? University of Virginia Law School (January 2019)[Counts as a “Podcast”]:

<https://www.youtube.com/watch?v=PdX816XNP0c>

Emily Bazelon, “The First Amendment in the Age of Disinformation” [CV]

Jameel Jaffer and Scott Wilkens, “Social Media Companies Want to Co-Opt the First Amendment. The Courts Shouldn’t Let Them,” *New York Times* (December 9, 2021)[CV]

Anya Shiffrin, “European Regulation of Online Disinformation May Be A Game Changer in 2022,” *Columbia Journalism Review* (December 8, 2021)[CV]

History:

Radical/De-Stabilizing Political Speech

Contemporary Controversy:

Li Yuan, “China May Ban Clothes That Hurt People’s Feelings,” *New York Times* (September 2023)[CV]

Austin Ramzy, “Student Sentenced As Hong Kong Uses Security Law to Clamp Down on Speech,” *New York Times* (November 23, 2021)[CV]

Ivan Nechepurenko and Andrew Kramer, “Russian Court Orders Prominent Human Rights Group to Shut,” *New York Times* (December 28, 2021)[CV]

Hartosh Singh Bal, “Modi’s Campaign of Fear and Prejudice,” *New York Times* (April 17, 2019)[CV]

Pre-Civil War

GGW 50-55, 104-105, 142-146

The Zenger Trial (1733-34).

The Sedition Act (1798) -- An Act for the Punishment of Certain Crimes Against the United States; The Sedition Act Debate in Congress; The Report of a Select Committee on the Petitions Praying for a Repeal of the Alien and Sedition Laws; Resolutions of Virginia of December 21, 1798; Resolutions of the Kentucky Legislature [CV].

People v. Ruggles (NY 1811)[CV]
GGW 190-194

States Debate Prohibiting Abolitionist Speech; Resolutions of South Carolina; New York in Reply to the South; Wolf, Annual Message to the Assembly (1835)[CV]; Congress Debates Incendiary Publications in the Mail (1836); Report on Post Offices and Post Roads

GGW 247-251

The Trial of Clement Vallandigham (1863)

Modern (World War I – Present)

Theodore Schroeder, “The Meaning of Unabridged Freedom of Speech” [CV]
Zechariah Chafee, Jr., “The Freedom of Speech” [CV]

GGW 331-336

Schenck v. U.S. (1919); *Abrams v. U.S.* (1919) [CV]; *Gitlow v. New York* [CV];
Whitney v. California (1927)

GGW 417-425, 428-430,

Minorsville v. Gobitis (1940)[CV]; *West Virginia Board of Education v. Barnette* (1943); *Dennis v. United States* (1951); *United States v. O’Brien* (1967);
Brandenburg v. Ohio (1969)

Contemporary Controversy:

Supreme Court May Reconsider Online Speech:

“Justices Poised to Reconsider Online Speech,” *New York Times* (January 19, 2023)[CV]

PODCASTS:

- 1) “How Free Speech Under the First Amendment Developed” (NCC 2022):

<https://constitutioncenter.org/news-debate/podcasts/the-evolution-of-the-first-amendment>

- 2) “From Spies to Leakers: A History of the Espionage Act” (NCC 2024):

<https://constitutioncenter.org/news-debate/podcasts/from-spies-to-leakers-the-history-of-the-espionage-act>

Modern Free Press (First Amendment)**Contemporary Controversy:**

Choe Sang-Hun, “President’s War Against ‘Fake News’ Raises Alarms in South Korea,” *New York Times* (November 2023)[CV]

Oscar Schwartz, “That Comment Someone Left on Facebook? It Can Get You Sued,” *New York Times* (September 24, 2021) [CV]

GGW 425-428

New York Times v. Sullivan (1964)

PODCASTS:

- 1) “Should the Supreme Court Reconsider *NY Times v. Sullivan*?” (NCC 2019):

<https://constitutioncenter.org/interactive-constitution/podcast/should-the-supreme-court-reconsider-nyt-v-sullivan>

- 2) “Can a Public Official Block You on Social Media?” (NCC 2023):

<https://constitutioncenter.org/news-debate/podcasts/can-a-public-official-block-you-on-social-media>

- 3) “The First Amendment On Campus and Online” (NCC 2023):

<https://constitutioncenter.org/news-debate/podcasts/the-first-amendment-on-campus-and-online>

- 4) “Artificial Intelligence, Defamation, and New Speech Frontiers” (NCC 2023):

<https://constitutioncenter.org/news-debate/podcasts/artificial-intelligence-defamation-and-new-speech-frontiers>

- 5) “What Are ‘True Threats’ Under the First Amendment” (NCC 2023):

<https://constitutioncenter.org/news-debate/podcasts/what-are-true-threats-under-the-first-amendment>

WEEK TEN

The Relationship Between Freedom and Equality

GGW 613-617

Chaplinsky v. New Hampshire (1942)[CV]

Beauharnais v. Illinois (1952) [CV]

Texas v. Johnson (1989)

R.A.V. v. St. Paul (1992) [CV]; *Virginia v. Black* (2003)[CV]; *Snyder v. Phelps* (2011)[CV]

Contemporary Controversy:

Maya Takeli and Emma Bubola, “Denmark, Fearing Reprisals, Bans Quran Burning,” *New York Times* (December 2023)[CV]

PODCASTS:

- 1) “Free Speech, Same-Sex Marriage, and Anti-Discrimination Laws” (NCC - 2022)(re *303 Creative v. Elenis*)

<https://constitutioncenter.org/news-debate/podcasts/free-speech-same-sex-marriage-and-anti-discrimination-laws>

Money as Speech and the Future of Democracy

GGW 820-833

Citizens United v. FEC (2010)[equality of voice v. political speech?]

Janus v. AFSCME (2018)

“America Has a Free Speech Problem” *New York Times* (March 2022)[CV]

Current Free Speech Doctrine, from Kersch, *Freedom of Speech: Rights and Liberties Under the Law* (2003)[CV]

PODCASTS:

- 1) “Free Speech Throughout World History” (NCC 2022):

<https://constitutioncenter.org/news-debate/podcasts/free-speech-throughout-world-history>

WEEK ELEVEN:

RELIGION (FIRST AMENDMENT AND STATE CONSTITUTIONS)

The Non-Establishment of Religion (“Establishment Clause”)

Contemporary Controversy:

PODCASTS:

- 1) Vouchers, Prayers, and Religion in American Schools (NCC 2022):

<https://constitutioncenter.org/news-debate/podcasts/vouchers-prayers-and-religion-in-american-schools>

- 2) “Church-State Separation and the Constitution” (NCC 2022):

<https://constitutioncenter.org/interactive-constitution/podcast/church-state-separation-and-the-constitution>

- 3) “Student Aid, Religious Education, and the First Amendment” (NCC 2021):

<https://constitutioncenter.org/news-debate/podcasts/student-aid-religious-education-and-the-first-amendment>

- 4) “The Future of Church and State at SCOTUS (NCC 2020):

<https://constitutioncenter.org/interactive-constitution/podcast/the-future-of-church-and-state-at-scotus>

- 5) “The Bladensburg Peace-Cross Case” (NCC 2018):

<https://constitutioncenter.org/interactive-constitution/podcast/the-bladensburg-peace-cross-case>

Origins

GGW 39-46

William Blackstone, “Of Offenses Against God and Religion” (1773); John Locke, *A Letter Concerning Toleration* (1689); Roger Williams, *The Bloody Tenent* (1644).

GGW 97-103, 136-139

South Carolina Constitution of 1778; Virginia Debates Over Religious Assessments, including James Madison’s “Memorial and Remonstrance on Religious Assessments”; The First American Presidents on Thanksgiving Proclamations [CV]; Thomas Jefferson, Letter to the Danbury Baptists (1802); Massachusetts Debates Test Oaths (1820-1821)

Debate Over Congressional Chaplains [CV]; Debate Over Sunday Mails [CV]
GGW 246

Proposed Constitutional Amendments on Religious Establishment (Blaine Amendments)[CV]

Modern Church-State Separation

John F. Kennedy, Speech to the Greater Houston Ministerial Association [CV]

GGW 400-404, 583-589, 685-692, 796-801

Everson v. Ewing (1947) [CV]; *Engel v. Vitale* (1962); *Lemon v. Kurtzman* (1971)[CV]; Ronald Reagan, Speech to National Religious Broadcasters (1984); *Lee v. Weisman* (1992); *Zelman v. Simmons-Harris* (2002)

Trinity Lutheran Church v. Comer (2017)

American Legion v. American Humanist Association (2019)[CV]

Carson v. Makin (2022)[CV – John Vile overview]

Kennedy v. Bremerton School District (2022)[CV – John Vile overview]

WEEK TWELVE:

Free Exercise of Religion (“Free Exercise Clause”)

Contemporary Controversy:

Andrew Keh, “Chick-fil-A’s Closed on Sunday Policy Prompts Highway Rest Stop Revolt,” *New York Times* (December 2023)[CV]

PODCASTS:

- 1) “A Debate About Religious Liberty in America” (NCC 2023):

<https://constitutioncenter.org/news-debate/podcasts//a-debate-about-religious-liberty-in-america>

2) “Religious Liberty at the Founding” (NCC 2023):

<https://constitutioncenter.org/news-debate/podcasts/religious-liberty-at-the-founding>

3) Religious Exemptions from the Founding to Today (NCC 2021):

<https://constitutioncenter.org/interactive-constitution/podcast/religious-exemptions-from-the-founding-to-today>

4) Religious Liberty in France and America (NCC 2021):

<https://constitutioncenter.org/interactive-constitution/podcast/religious-liberty-in-france-and-america-a-constitutional-dialogue>

GGW 46-49, 318-321

Maryland Toleration Act; Debates over religious exemptions (1789)

Reynolds v. U.S. (1878)

GGW 502-505, 589-594

Cantwell v. Connecticut (1940) [CV]; *Wisconsin v. Yoder* (1972); *Sherbert v. Verner* (1963)

Employment Division v. Smith (1990)

Church of the Lukumi Babalu Aye v. Hialeah (1993)[CV]

GGW 717-720, 801-805

Christian Legal Society v. Martinez (2010)[CV]

Burwell v. Hobby Lobby Stores (2014)[CV]

Masterpiece Cake Shop v. Colorado Civil Rights Commission (2018)

WEEK THIRTEEN:

BODILY AUTONOMY

Contemporary Controversy:

(1) Covid -- Vaccine and Mask Mandates

Mark Landler, “Vaccine Mandates Rekindle Fierce Debate Over Civil Liberties” *New York Times* (December 10, 2021)[CV]

PODCASTS:

- 1) “Civil Liberties and Covid 19” (NCC 2020):

<https://constitutioncenter.org/interactive-constitution/podcast/civil-liberties-and-covid-19>

- 2) “Are Vaccine Mandates Constitutional?” (NCC 2021):

<https://constitutioncenter.org/interactive-constitution/podcast/are-vaccine-mandates-constitutional>

Early:

GGW 49, 103, 268-271, 321-325, 327-328

Jacobson v. Massachusetts (1905); *Buck v. Bell* (1927).
Bradwell v. Illinois (1873)

Modern:***Sexual and Reproductive Autonomy; Gender Non-Conformity:***

GGW 412-416, 598-609, 806-812

“My Abortion” *New York Magazine* [CV]

Griswold v. Connecticut (1965); *Roe v. Wade* (1973)[CV]; Reagan Administration on *Roe v. Wade* (1986); *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992)

Dobbs v. Jackson Women’s Health (2022)[CV]

GGW 609-612, 698-703, 813-820

Bowers v. Hardwick (1986); *Lawrence v. Texas* (2003); *Obergefell v. Hodges* (2015).

Bostock v. Clayton County (2020)[CV](read Justice Gorsuch’s opinion for the Court only).

PODCASTS:

- 1) “Roe v. Wade at 50” (NCC 2023):

<https://constitutioncenter.org/news-debate/podcasts//roe-v-wade-at-50>

- 2) “Abortion in the U.S. and Abroad After *Roe*” (NCC 2022):

<https://constitutioncenter.org/news-debate/podcasts/abortion-in-the-us-and-abroad-after-roe>

WEEK FOURTEEN

PRIVACY (FOURTH/FIFTH/14TH AMENDMENTS)

Contemporary Controversy:

Digital Surveillance in the U.S.:

Charlie Savage, “Talks on Surveillance Law Simmer as Its Expiration Date Looms,” *New York Times* (November 2023)[CV]

PODCASTS:

- 1) “The Future of Digital Privacy” (NCC 2017):

<https://constitutioncenter.org/interactive-constitution/podcast/the-future-of-digital-privacy>

Digital Surveillance in China:

Muyi Xiao and Paul Mozur, “A Digital Manhunt: How Chinese Police Track Critics on Twitter and Facebook,” *New York Times* (December 31, 2021)[CV]

Facial Recognition Technology in the US:

“Lawyers Barred by Madison Square Garden Found a Way Back In,” *New York Times* (January 16, 2023)[CV].

GGW 358-359 364-367, 473-480, 853-860

Olmstead v. U.S. (1928)

PODCASTS:

- 1) “The Fourth Amendment: Past and Present” (NCC 2019):

<https://constitutioncenter.org/interactive-constitution/podcast/the-fourth-amendment-past-and-present>

- 2) “When Can Police Enter Suspects’ Homes? (NCC 2021):

<https://constitutioncenter.org/interactive-constitution/podcast/when-can-police-enter-suspects-homes>

Mapp v. Ohio; *Katz v. U.S.* (1967); *Skinner v. Railway Labor Assn*;
Pottawatomie v. Earls (2002)[CV]; *U.S. v. Jones* [CV]

Crime Control -- Police Surveillance

Terry v. Ohio (1968) [CV]
Omnibus Crime and Safe Streets Act of 1968 [CV]
Baltimore City Police Department Investigation and Consent Decree (2016-2017)

CODA: WHERE ARE CIVIL LIBERTIES GOING FUTURE?

**The Confusing Conjunction of Hyper-Liberalism and Illiberalism: Whose Rights?
Whose Freedom? Where is the Trump Court?**

GGW 763-772

Emily Bazelon, "How Will Trump's Supreme Court Remake America" (*New York Times*,
February 27, 2020)[CV]